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Coalition for Wireless Competition

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

The Honorable Reed E. Hundt
Chairman
Federal Communications Commission
1919 M St., N.W.
Washington, D.C.

Dear Chairman Hundt:

We are SWMRs. Each of us wants, or represents a company which wants, to be an owner of a Personal Communications Service (PCS) license, not merely an investor.¹ Every one of us has had some significant degree of experience trying to raise money for small businesses generally, and communications ventures specifically. So when we talk about what SWMRs need to have a fair shot in PCS, we are basing our opinions on marketplace realities that we understand.

We support PCS auction rules that create real and significant ownership opportunities for small, women-owned, minority-owned, and rural telephone businesses (SWMRs), consistent with the Congressional directive to create such opportunities. At the same time, of course, the Commission is under great pressure from some large companies and pioneer preference license winners to offer only a few very large PCS licenses.

Mr. Chairman, we fear that the FCC's process is moving towards effectively eliminating real and significant ownership participation in PCS by SWMR entities. We are very concerned that the final PCS auction rules will benefit only some large companies and pioneer preference winners.

As discussed in detail below, and in our attached position paper, creating huge 30 MHz licenses and not designating licenses for SWMRs, means SWMRs will be effectively excluded from PCS. We note that the policy arguments we make here have also been articulated by rural telephone companies seeking to participate in PCS.

SWMRs need assistance to compete in the auction, but this is not social welfare. Giving opportunities to SWMRs is good economics and good telecommunications policy. One very clear lesson from the communications revolution of the last several decades is that small businesses are a vital source of new ideas, new technology, new jobs, and new competition to the big, established players.

There are some who object to the inclusion of preferences for designated entities in the PCS auction saying that "the Government is not in the business of doing favors." Frankly, it is remarkable that anyone in the FCC could put forth this view. Including preferences for designated entities would

¹ Ms. Patricia Worthy, Professor of Law at Howard University, signed this letter not as a potential bidder, but as an advocate of SWMR participation in the PCS auction.

be a small investment spread over hundreds of entities. Compare it to the Commission's spectacular Christmas Eve spectrum gifts to a few "pioneers". Compare it to the Commission staff now apparently proposing to follow exactly the plan advocated by the same "pioneers" to protect and to reduce competition to those huge gifts. Just who is getting Government welfare?

And why is this favoritism extending to the final plan for the whole nation, and hurting our chance to compete in the process?

What we have heard from the FCC staff is that you have to be a huge company to make it in PCS; that you need a huge MTA license to compete. We are told that small companies can't succeed in PCS. We are told that some of us should settle for a system which rewards big companies for allowing some SWMRs to invest in their deals.

It appears that some of your staff are deciding who can succeed in PCS and who cannot, and are structuring the broad band PCS rules accordingly. We think that is more than inappropriate. The Federal Government should not adopt rules designed to favor well-heeled companies to the exclusion of diversified licensees. We think you should create opportunities for as many different kinds of companies as possible, rather than trying to pick winners and losers. Please remember that MCI, TCI and a host of others would have qualified as "designated entities" when they started.

Mr. Chairman, we are not interested in being bit players in someone else's deal. Each of the points below are crucial steps in the effort to ensure the creation of a fair PCS marketplace that is open to SWMR entities as owners and operators. We implore you to consider them. We want the chance to compete in the marketplace.

1. There should be two designated licenses set aside for auction to designated entities only.

The historical exclusion of SWMR entities from the telecommunications revolution should more than justify the offering of set aside licenses. Bidding credits/investor preferences alone may enrich some parties, but they will not allow real SWMR ownership. Up against the huge companies, we simply have no chance in the auction.

Commission staff are proposing to replace designated licenses with bidding credits based on your economists' modeling of the "right" discounts needed for SWMRs to win licenses. It is simply not the responsibility of, nor is it appropriate for, the Commission to wager all SWMR participation in PCS on its prediction of auction prices. And we are amazed that your staff might think they can predict auction prices at all.

Under the current plan of seven licenses per market, surely it makes sense to designate two of them to encourage the innovation and diversity of service that SWMRs will bring. If two of seven appears too high a ratio, the FCC should divide the available spectrum into more licenses and, thereby, create more opportunities per marketplace. There is no justification for 30 MHz licenses. Make them 20s.

2. Make all the licenses Basic Trading Area licenses.

By granting some MTA licenses and some BTA licenses, and by the reality that SWMRs are confined to bidding for BTA licenses, the Commission is imposing a preferred market structure, and

disadvantaging SWMRs. By creating some or all licenses as MTAs, you put us at a major competitive disadvantage when we try to raise capital. Potential investors will see that MTA licensees will be able to offer service across huge geographic areas immediately, while BTA licensees will need time to negotiate alliances and joint ventures.

Companies do not need such extensive coverage to run a PCS business for all market purposes. Those that desire such coverage will either bid for, or quickly and efficiently aggregate licenses to reach an optimal level. Offering a license structure based primarily on MTAs is a gift to the largest potential PCS bidders and pioneer preference winners, who are scrambling to protect the great deal they already have, and it hurts SWMRs.

Furthermore, the decision of the Commission in its overall auction ruling to prevent aggregation of SWMRs for bidding purposes is counterproductive at the BTA level, and creates a Catch-22 at the MTA level. We are too small to bid alone for MTAs, but small businesses would be barred from the preference if we combine as we must to raise such a level of capital.

3. Make all licenses 10 to 20 MHz BTAs.

Huge licenses are not needed to make PCS succeed. Nextel has raised hundreds of millions of dollars of investment capital to build a business with 8-12 MHz licenses in small areas. Others like CenCall are doing the same.

30 MHz MTA licenses create dramatic, unfair advantages for a few large companies, and thereby harm our ability to raise capital. Imagine trying to convince an investor to give us money when:

- 30 MHz licensees will have more than sufficient spectrum to offer one stop shopping for every possible future PCS application, while other licensees will not.
- 30 MHz licensees will not have to worry for many years about interference from current users; whereas, bidders for the 10 and 20 MHz blocks will have to deal with this immediately.

Interference from incumbents is not an insuperable issue as repeated studies have demonstrated, but differential advantages between licensees could be in the arena of attracting capital. We find it ironic that the pioneer preference winner which is most vociferous now about the "necessity" of 30 MHz licenses won its free license based on technology which minimizes interference from incumbents.

Such huge allocations waste spectrum. The right answer is not to eliminate our shot at bidding by making all lower band licenses large spectrum MTAs. It is for all PCS licenses to be awarded as smaller MHz licenses on a BTA basis.

The FCC says it wants more competition. The lower band is where that will come first. So why not create four 20 MHz competitors in the lower band, with one designated for SWMRs?

If big companies want more spectrum covering bigger areas, let them win in the auction, or acquire such licenses or extra spectrum as needed in the aftermarket.

4. The rules should allow SWMRs to own and operate PCS licenses – not just invest in others' operations.

Auction and license rules such as MTAs, 30 MHz licenses, and bidding preferences for large companies that include some portion of SWMR investment extinguish any real SWMR ownership opportunities. Please do not reduce the roles of SWMRs in the next generation of wireless to being bought (or rented) for investor preferences in a PCS side market.

5. Make the financial rules rational for investment by SWMRs, and protect the Treasury from abuse.

There are a series of very practical issues here, each of which is addressed by our position paper. Issues such as initial payments, deferred spectrum payments, and the size of the licenses against which we must compete are all absolutely critical. We commend those ideas to you.

One that deserves special attention here is the concern about abuse. Some believe that designated entities will merely resell, or "flip," the licenses to large players for financial gain. Focussing on "flipping," however, misses the point.

Designated entities will pay hard cash for licenses. It is possible (but not assured) that if licenses are set aside for these entities the government will get paid less for those licenses. But we will not be able to raise the bidding and construction capital if we cannot offer investors an "exit strategy" if we fail.

Our group proposes a very specific solution. We suggest that all that is required to eliminate the concern regarding designated entities "flipping" their licenses to non-designated entities is to require (for a period of years after the auction) that all non-designated entity purchasers to pay the Government the entire balance due on the license from the auction and the difference between the auction price of the license and the full market value of the license at the time of the auction. That is to say, if a transfer occurs, the non-designated entity, in addition to paying off any outstanding debt to the Government, must return to the Government the original cost of the preference.

Such an exchange will necessarily drive down the cost of the resold license and eliminate the possibility for undue enrichment. By making the purchaser responsible for paying the cost of the preference, the price of a resold designated license is then the same to a non-designated entity as it would be if the license were purchased by another non-designated entity. In such a case, a designated entity is not able to profit from purchasing the license at a preferred price and then selling the license at market value.

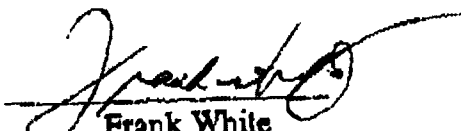
We hope you will give us the opportunity to compete in the marketplace. We would be delighted to meet with you and your staff to discuss these issues.

Sincerely yours,



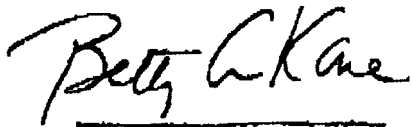
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American Women in Radio and Television

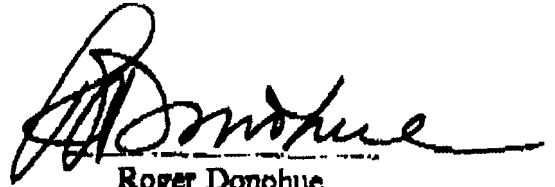


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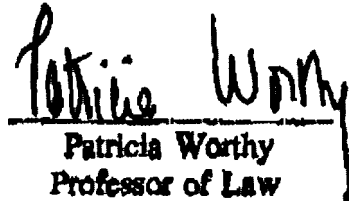
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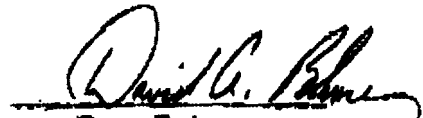
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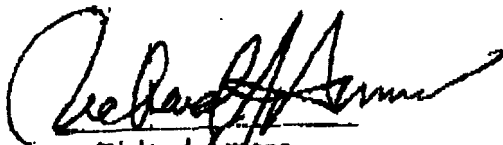
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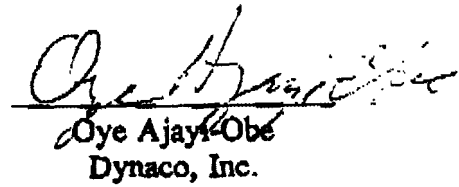


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